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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **BAIL APPLN. 1423/2016**

SATBIR SHARMA

..... Petitioner

Represented by: Mr. Manoj Ohri, Sr. Adv. with
Mr. Sudhir Nagar, Adv.

versus

STATE

..... Respondent

Represented by: Mr. Hirein Sharma, APP with
Insp. A.K. Singh SHO Gazipur,
SI Kiran Pal.
Mr. Gopal Sharma, Ms. Tanya
Bhatia, Adv. for R-2.

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

ORDER

08.09.2016

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1. On 20th July, 2016 noting the contention of learned counsel for the petitioner, this Court issued notice directing the status report to be filed by the DCP concerned intimating what action has been taken against the investigating officer for his conduct of deleting Section 307 IPC from the investigation when on the first date in the FIR itself there was an allegation of gun-shot injury and directed interim protection in favour of the petitioner. The contentions of the learned counsel for the petitioner as noted in the order dated 20th July, 2016 were:

BAIL APPLN. 1423/2016

page 1 of 4

“Learned counsel for the petitioner points out that in the FIR registered, there are allegations against the petitioner that he took out a pistol from his pocket and put the same in the mouth of husband of the complainant and threatened to kill him. Section 307 IPC was invoked when FIR was registered. When the petitioner filed regular bail application before learned Sessions Court, Section 307 IPC was there and the same was noted in the order dated 24th May, 2014. The order also notes the contents of the FIR i.e. that the petitioner took out a pistol and fired two shots at Sanjay Sharma. It also notes that there was no recovery of pistol from the possession of the petitioner. Keeping in view the facts and circumstances of the case, learned Sessions Court granted bail to the petitioner on his furnishing personal bond/surety bond in the sum of ₹50,000/-. On a subsequent application moved by the complainant for cancellation of bail, vide order dated 11th May, 2016 the learned Additional Sessions Judge did not cancel the bail however held that while bail was granted to the petitioner, he was arrested for offences punishable under Sections 506/147/148 IPC which were bailable and not offences under Sections 307/506/147/148/149 IPC which were non-bailable. He clarified that petitioner had never been arrested for the non-bailable offences.

Learned counsel for the petitioner has shown me the copy of the arrest memo wherein it is noted that the FIR was registered under Section 354/452/307/506/147/148/149/34 IPC. Learned counsel for the petitioner also points out towards the order of this Court dated 4th November, 2015 passed in Bail Application No.1381/2014 filed by Vinod Sharma wherein it was noted that on 16th November, 2014 the Court was informed that the investigating officer had deleted Section 307 IPC from the present FIR however later, on 4th August, 2015 the said Section 307 IPC was added.”

2. As per the status report filed by the DCP East District the investigation of case FIR No.214/2014 PS Gazipur was transferred to DIU

BAIL APPLN. 1423/2016

page 2 of 4

East District vide order of the Joint CP dated 22nd April, 2015 who added Section 307 which was erroneously deleted and a charge-sheet has been filed which is pending before the Court of learned MM. It is further stated that a detailed enquiry was conducted which reveals that SI Kuldeep Singh the then IO in an unwarranted hurry deleted Section 147/148/149/307/506 IPC without any justification and initiation of a regular departmental enquiry has been recommended. Action has also been taken against the then SHO Inspector Vijay Kumar for failing to ensure proper investigation of the case despite observations of the Court of learned MM conveyed vide orders dated 25th July, 2014 and on 1st September, 2014.

3. A perusal of the record would reveal that the petitioner was granted regular bail by the learned ASJ on 24th May, 2014 noting the contention of the learned counsel for the petitioner that the FIR was registered as a counter-blast and that the petitioner took out a pistol from his pocket and put the same in the mouth of the husband of the complainant and threatened to kill him. It is also noted that the petitioner fired two gunshots at Sanjay Sharma and that there has been no recovery of pistol from the possession of the petitioner. The FIR was clearly noted to be for offences punishable under Sections 354/452/307/506/147/148/149/34 IPC. Having noted all the facts the clarification ordered by the learned ASJ on an application for cancellation of bail that the petitioner was never arrested for offences punishable under Section 307/506/147/148/149 IPC on the report of the investigating officer was unwarranted thereby rendering its order dated 24th May, 2014 granting regular bail to the petitioner nugatory.

4. Thus, the order dated 11th May, 2016 passed by the learned ASJ clarifying that the petitioner was never arrested for offences punishable under Section 307/506/147/148/149 IPC and was arrested only for bailable offences i.e. 506/147/148 IPC is set aside.

5. It is however clarified that the observations made hereinabove are no reflection on the merits of the application seeking cancellation of bail filed by the complainant before the learned Trial Court.

6. Petition is disposed of. Order dasti.

MUKTA GUPTA, J.

SEPTEMBER 08, 2016
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